

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by the City of Rice
for a Service Area Boundary Change Between
Minnesota Power and East Central Energy

ISSUE DATE: August 28, 2001

DOCKET NO. E-112, 015/SA-01-696

ORDER DENYING PETITION IN PART,
DISMISSING IN PART AND REQUIRING
FILINGS

PROCEDURAL HISTORY

On April 16, 2001, the City of Rice (City), Minnesota requested that the Commission alter the electric service area boundary between Minnesota Power Company (MP or the Company) and East Central Energy (ECE) so that an 83 acre parcel of land owned by Dean and Lois Virnig would become part of the ECE service territory. At present, part of the 83 acre site is in MP's service territory and part is in ECE's service territory.

On June 16, 2001 comments were filed by ECE and MP. ECE supported the City's request and MP opposed the request.

On June 27, 2001 the Commission received a letter from the Virnigs requesting that ECE serve both a new Virnig manufacturing plant built by the Virnigs and the remainder of their property.

On June 28, 2001 the Department of Commerce (DOC) filed comments and MP filed reply comments.

On July 31, 2001 this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

A. The Property

The Virnigs owned an 83 acre parcel of land of which they sold approximately 33 acres to the City of Rice. The City will use the 33 acres to develop an industrial park. All of the 33 acres, according to the City, are within ECE's service area.

The Virnigs are building a manufacturing facility in the southern corner of the remaining part of the 83 acre parcel, not within the 33 acres sold to the City. The entire manufacturing facility is being built within MP's service area.

Part of the remaining property owned by the Virnigs is in MP's service area and part is within ECE's service area.

B. The City of Rice's Request

The City requested that the entire 83 acre parcel be included in the service area of ECE. The City made this request because ECE advised the City that they can offer incentive rates to other builders in the industrial park as well as industrial development loans at less than normal commercial rates. This would be beneficial to the City and to builders in the industrial park and the City believes it is critical to the success of the park.

II. Scope of this Order

This Order will address two issues raised by the City's request. The first issue is whether ECE should be given authority to serve the Virnig Manufacturing site, and the second is whether the service area boundary should be redefined so that the remainder of the 83 acre parcel will be served by ECE.

III. Positions of the Parties on Service to the Virnig Manufacturing Site

A. ECE

ECE, at the request of the Virnigs, offered the Virnigs competitive electric rates. It advised the Virnigs of available grants for the installation of energy efficient equipment, indicated that they could qualify for low interest loans for energy efficient equipment as well as for financing land and building costs under rural economic development programs.

To extend electric service to the plant, ECE proposed extending an overhead line to within a few feet of the Virnig lot and then extending a three phase underground line on to the Virnig lot to connect to a step-down transformer at the rear of the manufacturing plant. ECE indicated that it would not be feasible for the manufacturing plant to extend a distribution line from its building to a transformer which ECE would construct on its side of the service area boundary because of a substantial voltage drop that would occur on the service line between the transformer and the building.

ECE argued that this was a situation where the customer's property straddled a service area boundary line of two electric utilities and the customer should be able to choose the electric supplier. ECE argued that the Commission, in past decisions when a property straddled a service area boundary, allowed the customer to choose its utility, provided that the delivery point was located in the chosen utility's service area. In this situation the customer can't realistically extend its own distribution system to an ECE delivery point within its service area without sacrificing necessary power and reliability. ECE argued that under these circumstances the customer should be given latitude and allowed the choice.

B. MP

First, MP indicated that there was no disagreement that the Virnig manufacturing site was wholly within MP's service area. MP also noted that the Virnig manufacturing site does not reach the boundary line between the utilities. Further, MP indicated that it currently has service available within 100 feet of the Virnig manufacturing site and serves another customer on the Virnig property.

MP argued that under Minnesota Law it has exclusive rights to provide electric service in its assigned service area unless an agreement between the utilities exists.¹ MP further argued that it is only when a facility receiving service straddles a service territory boundary that the customer has a choice of its energy supplier. Customer choice does not apply in situations when it is the underlying real property ownership, and not the facility, that straddles a service territory boundary.

MP indicated that none of the Minnesota statutory provisions for a competitive rate,² a discretionary rate reduction³ or a service extension in certain limited situations⁴ would apply in this case. MP did not dispute that there were certain financing and incentive packages available to cooperatives (including ECE) through the United States Department of Agriculture that MP could not compete with. However, MP argued that such programs should not be used to subvert the State's service territory laws and facilitate customer migration from existing utility services.

C. The Virnigs

¹ Minn. Stat. § 216B.40.

² Minn. Stat. § 216B.162, subd. 2.

³ Minn. Stat § 216B.162, subd. 10

⁴ Minn. Stat. § 216B.42.

The Virnigs wrote to the Commission requesting that ECE provide service to their manufacturing plant and to the remainder of their property, stating it would be the best energy supplier for them.

D. DOC

The DOC recommended that the Commission deny ECE's request to serve the Virnig plant. The DOC argued that ECE has no applicable legal basis for its request and it would be inconsistent with previous decisions of the Commission to grant ECE's request.⁵ The DOC agreed that the Virnig plant was located wholly within MP's service territory and clearly outside of ECE's service area. The boundary was set well before the Virnigs began to build and, the DOC argued, to honor customer choice in such situations could create the potential for abuse. Customers with the means and incentive to manipulate the system could engage in gerrymandering to obtain service from the utility of choice.

Further, the DOC argued that it is in the public interest to maintain the integrity of utility service areas, as doing so ensures that all customers within the area receive reasonable electric service, encourages long-term utility investment and keeps capital costs low by decreasing the risk that the utility will lose its service area and future revenues of customers located in its service areas.

The DOC also indicated that the existence of rate incentives does not provide a legal basis for ECE's request.

IV. Commission Action Regarding Service to the Virnig Plant

The Commission will deny the City's request that ECE serve the Virnig plant. The Commission agrees with the DOC that this case is not an appropriate case in which to implement customer choice for two reasons. First, the Virnig plant site is located wholly within MP's service area boundary and to allow choice in this circumstance could encourage gerrymandering to obtain service from the utility of choice. Second, in cases when the Commission has allowed customer choice the Commission has required that the power be delivered within the assigned service area of the chosen utility and be distributed over the customer's distribution system to any part of the property within the assigned service area of the other utility. In the present case, ECE readily admits that this requirement cannot be met without sacrificing power and reliability, which the customer is unwilling to do. For these reasons the request for ECE to service the Virnig property will be denied.

V. Positions of the Parties on Future Service to the Entire Park

⁵ See the June 14, 1996 ORDER REQUIRING CESSATION OF SERVICE OR COMPENSATION DETERMINATION, in Docket No. E-252,120/C-95-517, *In the Matter of a Complaint by McLeod Cooperative Power Association Against Hutchinson Utilities Commission Regarding Extension of Service to Hutchinson Technologies, Inc.*

A. ECE and the City of Rice

The City argued that the builders' incentive rates and reduced-interest loans that ECE could offer would financially benefit the City and the builders in the park and were critical to the success of the industrial park. The City stated that it did not receive any similar proposal from MP.

B. MP

MP stated that it is not interested in voluntarily relinquishing any of its service territory rights in this situation.

MP argued that the City's request that all future development in the industrial park be served by ECE is not ripe for Commission action and therefore should be dismissed. MP stated that the City is not the proper party in interest to raise a complaint under Minn. Stat. § 216B.43 because it is not an "affected utility" under the statute and it does not appear that there is a claim under Minn. Stat. § 216B.39 (assigned service area). Further, the claim appears to fail under Minn. Stat. § 216B.41 and 216B.44, (specifically applying to a municipality which owns and operates an electric utility) because the City does not operate a municipal utility. Finally, there has been no claim made under Minn. Stat. § 216B.42 (service extension in certain situations). MP indicated that any revisions to the existing service territory boundaries should be done under Minn. Stat. § 216B.42 and that any such revisions would need to be shown to be in the public interest.

Also, it is MP's position that although ECE can offer customer incentives that MP cannot offer, there is no basis in law for this to dictate service area boundary changes.

C. DOC

The DOC indicated that, to the best of its knowledge, there is presently no construction of industrial facilities in other parts of the industrial park. Further, the DOC noted that its review of the documents in this case indicated a dispute as to where the MP-ECE service area boundary should be drawn in the remaining part of the industrial park (excluding the Virnig manufacturing plant). This matter requires clarification.

For this reason the DOC recommended that the Commission dismiss, without prejudice, the request by the City that all future developments be served by ECE, which would require a change to service area boundaries. This dismissal would allow the parties to address the question of service area boundaries in the industrial park in future cases, if necessary.

At the same time, the DOC recommended that, in order to clarify the service boundary matter, the Commission request filings from ECE and MP containing official service area maps and legal descriptions of the service area boundaries in and around the City of Rice between ECE and MP as well as any agreements between the parties stipulating such boundaries. Clarification of the service area boundaries may avoid the need for future customers to bring a question before the

Commission.

VI. Commission Action on Future Service

The Commission agrees that it is reasonable that the request by the City be dismissed without prejudice and that the service area boundary between ECE and MP in the rest of the industrial park be clarified. This will enable future customers to return to the Commission at a later time, if necessary, and will also give the Commission the specific facts, which are not presently available, that may be necessary for any future determinations.

ORDER

1. The request that East Central Energy serve the Virnig Manufacturing plant from within Minnesota Power's service territory is denied.
2. The request for a service territory boundary change within the 83-acre parcel of land is dismissed without prejudice.
3. Minnesota Power and East Central Energy shall make filings either agreeing on the present boundary location or providing the evidence supporting the individual positions on the current boundary location.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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